



United States Department of the Interior

BUREAU OF LAND MANAGEMENT FILLMORE FIELD OFFICE

35 East 500 North
Fillmore, UT 84631

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OCT 25 2001

DIVISION OF
OIL, GAS AND MINING

In Reply Refer to:

3809

(U-010)

UTU-075884

October 23, 2001

CERTIFIED MAIL # 7000 1530 0006 2417 0105
RETURN RECEIPT REQUESTED

DECISION

DICK STONE	:	43 CFR 3809 Failure to
DBA	:	Timely Reclaim and
UNIQUE MINERALS	:	Failure to Conduct
230 E BROADWAY STE 1205	:	Operations in Accordance
SALT LAKE CITY, UT 84111	:	Filed Notice

On September 23, 1998, you submitted to this office a 43 CFR §3809 Notice (Attachment "A") in which you proposed operations in the SE¼ of Section 24, T. 17 S., R. 13 W. (The actual site of the operations is in the NW¼ of Section 24.)

The notice stated that Unique Minerals was the operator; however, since Unique Minerals was not incorporated at that time, it was not a legal entity that could be considered an operator. In addition, you signed the notice, you were one of the mining claimants of record at that time and you promised to complete reclamation work at the site to the standards described in 43 CFR 3809. Notice declaration states "I hereby declare that I, or persons I have authorized to do so, will complete all necessary reclamation of areas disturbed during the course of my operations to the standards described in 43 CFR 3809.1-3(d)." Also, the Division of Oil, Gas and Mining (DOGM) has determined that you are the operator for this notice (see Attachment "B", a letter from UDOGM to you dated August 16, 2001) Therefore, the Bureau of Land Management (BLM) and the DOGM both consider you to be the operator. This conclusion is further substantiated by a letter dated July 29, 1999, from Neldon Adair, the President of Unique Minerals Inc., stating that the corporation was not responsible for this operation.

The original notice stated that there would be no anticipated periods of non-operation. During 1999, about two acres of disturbance was created. The disturbance consisted of about one-half mile of new road leading to an outcrop of Marjum Formation limestone in which a quarry was opened and a crusher set up. The operation was active for several months; however, on August 2, 1999, you submitted an amendment to the Notice which stated:

"We did not originally anticipate periods of non-operation. There will be a brief period of non operation due to ordering and replacing equipment at the quarry."

Several surface compliance inspections were conducted after the receipt of your August 2, 1999 notice amendment to ensure operations had begun again after a temporary period of non-operations. Inspections conducted on November 2, 1999, April 27, 2000, September 13, 2000, September 27, 2000 and June 8, 2001, detected no activity at the site since the crusher was removed shortly after the August 2, 1999 notice amendment.

The regulations (43 CFR §3809.3-7) state "All operators may be required, after an extended period of non-operation for other than seasonal operations to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing from the authorized officer to do otherwise." It is Utah BLM policy that reclamation will be requested if operations are inactive for 2 or more years (Utah BLM Surface Management Handbook Manual Supplement, Chapter III(C)2).

Based on inspections listed above, we have determined that your operations have been inactive for at least two years. You have not asked for nor received permission to defer reclamation; therefore, we are requesting reclamation at the site to commence within 30 days of receipt of this decision. If you do not want to reclaim the site at this time, then you must commence mining activity in accordance with your existing notice.

The only other options available to you are to file a notice or a plan of operations in accordance with the new surface management regulations published November 20, 2000. A copy of these regulations was sent to you on March 29, 2001. An interim financial guarantee in the amount of \$7500 will be required with either a notice or plan of operations. The final bond amount will be determined once a complete notice is filed or a plan of operations is approved. If you choose one of these options given above, the Notice or Plan of Operations and interim bond must be filed within 30 days of receipt of this decision.

In addition to the financial guarantee, an escrow account would have to be established for the appraised value of the material you propose to remove. The escrow account would be required since our preliminary determination is that the deposit you are mining is a common variety of limestone which is not locatable under the mining laws. In U.S v. Foresyth, 15 IBLA 59, the Board ruled that in order for limestone to be locatable, it must contain at least 95% carbonate. According to the assay you provided us (Attachment "C"), the Marjum Formation Limestone you are mining is only 46% carbonate.

In your letter to the State Director dated September 4, 2001, you mentioned that Unique Minerals has an appeal before IBLA (IBLA 2000-251) therefore, no actions should take place at this site. However, the site of the appeal before IBLA is located almost a mile away (see Attachment "D", the geological map submitted by you with your May 21, 1999 amendment to your notice) from the notice being addressed here. In addition, the appeal mentioned involves the sale of Wheeler Shale for use as building stone whereas this notice is for Marjum Formation limestone for use as an asphalt additive.

The mineral exam currently being prepared by Ron Teseneer is to determine the locatability of Wheeler Shale and not Marjum Formation limestone therefore (see Attachment "E", the legend to the aforementioned geological map), the results of that exam will not be applicable to your Notice. IBLA will determine whether or not your appeal of the sale of building stone was timely filed. The appeal before IBLA does not preclude your obligation to comply with surface management regulations at other sites.

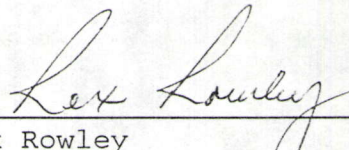
If you fail to comply with this request, a notice of noncompliance will be issued. You have the right to appeal to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

If you wish to file a petition pursuant to 43 CFR 3809.4(b) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the State Director, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based upon the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.



Rex Rowley
Field Office Manager

Enclosures

- A. Notice
- B. Letter from DOGM
- C. Assay Results
- D. Map
- E. Legend to Map

cc: Wayne Hedberg, DOGM (S/027/074)
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Barry Kandel, 1003 Whipoorwhill Dr, Clarks Summit, PA 18411-9671
Terry Murray, 726 Madison Rd, Magna, UT 84044
Clair Rogers, 13480 S 2200 W, Riverton, UT 84065
Neldon Adair, 2081 W 13180 S, Riverton, UT 84065
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